



No.

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1924

WILLIAM O'HARA and SVEN TJERSLAND,
Petitioners,

VS.

LUCKENBACH STEAMSHIP COMPANY,
Respondent.

PETITION FOR A WRIT OF CERTIORARI.

*To the Honorable William Howard Taft, Chief
Justice of the United States, and the Associate
Justices of the Supreme Court of the United
States:*

William O'Hara and Sven Tjersland, petitioners, respectfully petition that a writ of certiorari issue out of and under the seal of this court, directed to the United States Circuit Court of Appeals for the Ninth Circuit, requiring it to certify to this court

its proceedings in the above cause for review and correction by this court, for the following reasons:

SUMMARY STATEMENT OF FACTS.

This action involves the construction of the following parts of Section 2 of the Act of March 4, 1915 (38 Stat. 1164), to-wit:

"That in all merchant vessels of the United States of more than one hundred tons gross, excepting those navigating rivers, harbors, bays, or sounds exclusively, the sailors shall, while at sea, be divided into at least two, and the firemen, oilers and watertenders into at least three watches, which shall be kept on duty successively for the performance of ordinary work incident to the sailing and management of the vessel. * * * Whenever the master of any vessel shall fail to comply with this section, the seamen shall be entitled to discharge from such vessel and to receive the wages earned. But this section shall not apply to fishing or whaling vessels, or yachts."

And it appears herein that petitioners were hired by the defendant at New York in the State of New York, on September 30, 1922, to serve as seamen on the steamer "Lewis Luckenbach", a vessel of about 14,500 tons burden, and which was neither a fishing or whaling vessel or a yacht, for a voyage to Pacific Coast ports and return. Upon the arrival of the vessel in San Francisco, petitioners demanded their discharge, assigning more than one reason; one of the reasons however being that the

vessel had not been operated in accordance with the terms of the above statute, and it was conceded that it had not, as the sailors instead of being equally divided into watches to perform duty successively, were divided three to serve as quartermasters, three as night and day watchmen, all of whom did do duty successively; the other seven however were kept in one body, not divided into watches or at all, and did not do duty successively to the other sailors or to themselves, they being in one group, doing duty for eight hours during the daytime and being off 16 hours, a part of which was the night time, and asleep during a portion of that time; the demand of petitioners that they be discharged was denied, they left the vessel, were called deserters, sued herein for their wages, failed to recover, appealed and both courts held in substance that the above parts of the law was to prevent overwork. We respectfully submit, however, that whether the law was passed to promote safety of life at sea, or passed to prevent overwork, or whatever the reason of its passage, the statutory requirement that the sailors shall be divided, which of course means *equally* divided into watches, and shall perform duty successively to each other, is still present. Paragraph V of the answer herein (Tr. pp. 11-12) admits the sailors were not equally divided, the proofs also show that, and that at times during the night there would be but one man on deck (Tr. pp. 22-23), and petitioners therefore were not deserters,

but had a statutory right to leave the vessel, which was denied them herein.

**GENERAL REASONS RELIED ON FOR THE
ALLOWANCE OF THE WRIT.**

The enforcement of this section is of the greatest importance to seamen, passengers and every person that goes to sea, and Congress had but one purpose in passing it, that of always having sufficient men on deck, so that in case of disaster enough men would be there to get boats, life rafts out, and do other work that might lead to the safety of the lives of those who are asleep. The section was passed shortly after the investigations of the enormous loss of life occasioned by the loss of the "Titanic" and "Volturnia", and the following parts of the debates before the Committee shows the plain intent of Congress, the same being from pages 18 and 19 of the "Extension of Remarks of Hon. John E. Raker", and similar matters run all the way through the proceedings that led up to the passage of the section.

"Hon. William B. L. Wilson, M. C. of Pennsylvania has introduced a bill (H. R. 11372). His bill will, when enacted, do more to promote the safety of life and property at sea than has ever been done in all the history of this country. It provides: Watch and watch at sea, dividing the crews on deck into two watches, and the engine room crew into three watches, to be on duty alternately while the ship is at sea; * * *

In my last article I promised to deal separately with the more important features of the seamen's bill. Given a good vessel, proper boats, proper davits to lower those boats, and skilled men to handle both vessel and boats, there is nothing more important than watch and watch. Watch and watch, in the language of seamen, means that the crew are divided into two equal parts, speaking of the deck crew and into three equal parts, speaking of the engine room crew. The watches are, on deck or in the engine room, on duty alternately. They steer, keep lookout, keep the lead going and do such other things as are needed for the safety of the vessel. They keep everything clean and in order. The main point, however, is that they are there to keep things safe. The Arab is said to have a maxim that, 'Nobody meets a friend in the desert'; it is equally true that 'No vessel meets a friend on the ocean'. There is no telling when you may meet a vessel, day or night, and these meetings are full of danger, because they may mean collision. * * *

There is growing up a system, mostly in steamers, sometimes called Kalashi watches. This means that certain men are kept on the regular watch and watch, while the other members of the crew are what is called 'day men': the 'day men' work all day and are supposed to sleep all night. Of course, if anything happens, they are called out, and this is seldom considered on the next day, when they are kept at their work as if nothing had happened the night before.

This, of course, is hard on the men, but in itself has very little to do with safety, except as explained later. Some vessels have brought it down to having only two men to steer and two to keep lookout. Others have four to steer

and two to take lookout. This gives four or two hours at the wheel and four hours on the lookout. The British Commission laid it down as a demonstrated proposition that no man can give the attention necessary to proper steering for more than two hours at a time. For the same reason no man is in a fit condition to keep lookout for more than two hours without rest. * * *

Vessels are kept close in to save coal and be more comfortable, and that is right; but without a good lookout and an attentive helmsman, it is dangerous. Then there is the failure to see another vessel in time; there is a collision and life and property are lost. At such times the Kalashi watch shows what it really is, one man at the wheel and one man at the lookout, perhaps one more man on deck somewhere. The men are in their bunks asleep when she hits the shore or the other vessel. Every minute means more at this time than hours later. The men come on deck; they are sluggish with sleep; they come from the light in the forecastle out into a different light or darkness on deck. It takes sometime to come out; it takes more time to get accustomed to the different light or darkness on deck; they cannot act with the readiness and precision needed in such cases. The most important and valuable time is lost, and so probably are a number of lives; if one-half of the crew were on deck at the time, they would go ahead and do what is needed, and when the watch below comes up they are led by men on deck. The work goes promptly forward, and the chances of rescue are much greater.

By the time the watch below is on deck the boats are cast loose and ready to be put over the side if such is the necessary action. But aside from that, the passengers come on deck and finding the men cool and about their business, become themselves more cool and confi-

dent. There is order, action, confidence, and therefore a much improved chance of getting out of the most desperate scrape. With but the lookout, the helmsman, and the officer on deck when the trouble begins, there is a scurry to get the men out. The master is shouting orders that are not obeyed; because there is nobody to obey them, the men come on deck stupid from sleep and a change of light. Some time passes before the proper work begins to move; there is excitement which communicates itself to the passengers, who then try to seize the boats, and the result may be a free for all fight before any real rescue work can be done."

It is plain that Congress intended to abolish Kalashi watches, and it is plain the master of the "Lewis Luckenbach" still retained them, and it is very plain, this vessel was operated in violation of law, and the libelants had a right to leave.

Safety of life at sea is of the greatest importance. Congress in its wisdom established the rules to promote safety, and the law says that any seaman may leave the vessel if the statutory requirements were not followed, and they were not, so petitioners were deprived of a statutory right herein, besides the jeopardising of the laws prescribed by Congress to promote safety of life at sea.

There seems no question but what the construction given by the learned United States Circuit Court of Appeals and the learned District Court of the United States was erroneous; the law is very plain, it says in so far as applicable here,

"the sailors shall, while at sea, be divided into at least two, * * * watches, * * * which

shall be kept on duty successively for the performance of ordinary work incident to the sailing and management of the vessel." * * *

Of course seven of the sailors in this case were not divided into watches at all, nor were they "on duty successively" to any watch or person; they went on watch in the morning, stayed until evening and then went off for fifteen hours; no similar or any body of men either preceded or followed them, so the being "on duty successively" was not followed; but the term divide has a well defined meaning, as follows:

Graves v. White, 127 Am. St. Rep. 106:

Syllabus. "By common usage the common acceptance and definition of the word 'divide' unqualified by other words when used between two contracting parties, binds the severance or partition in two equal parts."

The parties in this case were contracting parties.

Supposing the language was, "shall be divided into at least two parts", instead of "into at least two watches", would anyone contend for a moment that a division into 3 and 3 and 7 was a proper division? Webster's Imperial Dictionary gives the definition of the word "Divide" as follows:

"9. In mathematics (a) to cause to undergo the operation of division, (b) to be contained in an *equal number of times*; as, ten divides thirty."

"11. *To mark into equal or regular parts*; to graduate; as, to divide a micrometer."

Supposing a board of directors of a corporation in which the capital stock was held in equal parts by three stockholders should divide the sum of \$100.00 between them as these watches were divided, to wit, two of the stockholders should get \$20.00 each, and the other \$60.00; would anyone contend that the money was properly divided? They certainly would not.

If a person was told to divide a number of men into not less than two companies, or not less than two platoons, or not less than two divisions, he as a matter of course would divide them equally, and if he did not, the person so telling him would immediately say he had not divided them according to instructions, but had scattered them. As the above case says, the word "divide" without any qualifying words necessarily means an equal division, but as we have said there was no division or successive duty of the day body of the crew in this instance.

But the decision of the lower court herein is to the effect that when you are told to divide, you are not required to divide into equal parts; we submit that that is not the meaning of the word, that the word "divide" means equal parts and nothing else.

But the gravity of the situation arises from the fact that Congress, after a long, thorough and patient investigation, determined that the division required by said Sec. 2 should be followed on vessels to promote safety at sea, and the effect of the deci-

sions herein are that the terms of the statute need not be followed, or complied with.

We respectfully submit that this case is of great importance, and a ruling of this court should be had upon the meaning of the said section.

Dated, San Francisco,
December 6, 1924.

Respectfully submitted,

H. W. HUTTON,

Attorney for Petitioners.

NOTICE OF TIME OF SUBMISSION.

The respondent in the above cause and its attorneys will please take notice, that the foregoing petition for a writ of certiorari will be submitted to the Supreme Court of the United States for decision, at its Court Room, Capitol Building, Washington, District of Columbia, on Monday the 29th day of December, 1924, at the opening of said Court on that day.

Dated, San Francisco,
December 6, 1924.

Yours respectfully,

H. W. HUTTON,

Attorney for Petitioners.

